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Agenda Item 5a

June 14, 2011

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. **SUBJECT:** Board Resolutions Regarding Termination of Contracts
- II. **PROGRAM:** Retirement Program
- III. **RECOMMENDATION:**

It is recommended that the Committee approve and recommend to the Board of Administration to rescind Board Resolution 07-01-AESB and adopt Board Resolutions EXEC-11-01 and ACT-11-02 regarding delegation of authority to terminate contracts and determining actuarial liabilities of plans upon termination.

IV. ANALYSIS:

1. Legal Background

Existing law contains provisions for the voluntary and involuntary termination of public agency contracts. The provisions governing voluntary terminations require the public agency to issue notice of its intent to terminate the contract and then adopt a resolution or ordinance terminating the contract not less than a year after notice.

Government Code Section 20572 sets forth the provisions governing involuntary terminations which authorize CalPERS to terminate an agency's contract if:

- the contracting agency fails to pay any installment of required contributions for 30 days after a demand for payment; or
- the contracting agency fails to provide information required for the administration of the system for three months after a demand for the information; or
- CalPERS determines that the agency no longer exists.

Upon termination of its contract and before the agency's plan is merged into the terminated agency pool, the agency's assets and liabilities are determined. If its assets exceed its liabilities, the agency is entitled to a refund of the difference. If its liabilities exceed its assets, the agency is required to contribute to the system the difference (i.e., the amount needed to fund its liabilities). Government Code Section 20577 provides that if the employer fails to submit such a contribution,

the CalPERS Board can declare the terminated employer in default and reduce the benefits of all employees and retirees by the percentage necessary to decrease the liabilities to an amount equal to the assets being transferred to the terminated agency pool.

Government Code Section 20577.5, which became effective on January 1, 2004, further allows the CalPERS Board to merge a plan that has been involuntarily terminated by the CalPERS Board pursuant to Section 20572 into the terminated agency pool without benefit reduction, or with a lesser reduction if certain conditions are met.

2. New Delegations

In April 2004, the CalPERS Board adopted Resolution 07-01-AESB that delegated authority to the Chief Actuary to terminate contracts under limited conditions, and merge a terminated plan into the terminated agency pool if merger could be done without benefit reduction.

As a result of the organizational changes that took place this year at CalPERS, it has been determined that changes to this resolution are necessary. Prior to the organizational changes, the Chief Actuary oversaw the operations of the Actuarial and Employers Services Branch that included the area that administers the contracts between CalPERS and employers for retirement benefits. The Chief Actuary no longer oversees the contracts area and should therefore no longer exercise authority to terminate contracts.

As a result, we are asking that this Committee recommend to the Board that it rescind Board Resolution 07-01-AESB and adopt Resolution EXEC-11-01 to delegate authority to the Chief Executive Officer to terminate a contract with a public agency employer under certain conditions, and to further delegate authority to the Chief Actuary to merge the terminated plan into the terminated agency pool if this can be done without benefit reduction. Please see Attachment 1 for a copy of the proposed revised resolution.

3. New Actuarial Policy

In this agenda item we are also asking the Committee to recommend to the Board the adoption of Resolution ACT-11-02 which (i) identifies a contingency for mortality fluctuation to be used in calculating liabilities for plan terminations, (ii) directs the Chief Actuary to make the actuarial determinations of a terminated agency's liabilities described in Government Code section 20576(a), and (iii) approves such determinations by the Chief Actuary.

Government Code section 20576 authorizes the Board to include contingencies for mortality fluctuation when determining the amount of contribution required by an employer at the time of contract termination. The Actuarial Office has been using a 7% load for mortality fluctuations since 1985.

We recently reviewed the appropriateness of this load and determined it was still appropriate to use a 7% load. We are proposing that a Board policy be adopted stating the use of the 7% load for calculation of liabilities upon plan termination. We are also proposing that this Board policy should direct the Chief Actuary to make actuarial determinations of a terminated agency's liabilities and approve such determinations. The proposed Board policy can be found in Attachment 2.

V. STRATEGIC PLAN:

This item supports Goals I CalPERS Strategic Goals, to exercise global leadership to ensure the sustainability of CalPERS' pension and health benefit systems.

VI. RESULTS/COSTS:

The impact of merging terminating plans into the terminated agency pool will be measured on a plan by plan basis. As required by law, before contemplating not reducing the benefits of the members of a terminating plan, the Chief Actuary will determine whether or not it will adversely impact the actuarial soundness of the terminated agency pool.

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